REMARKS

This application has been reviewed in light of the Final Office Action mailed March 14, 2005. Reconsideration of this application in view of the below remarks is respectfully requested. Claims 4 and 6 – 8 are pending in the application with Claims 4 and 6 – 8 being in independent form.

Initially, a telephone interview was conducted with the Examiner on June 8, 2006 in an effort to advance prosecution of the present application. While no firm agreement was reached regarding the pending claims, a better understanding of the concerns and objections of the Examiner was developed. As a result, the following remarks are presented in response to the rejections raised in the present Office Action as well as the issues discussed in the interview.

I. Rejection of Claims 4 and 6 – 8 Under 35 U.S.C. §103(a)

Claims 4 and 6 – 8 are rejected under 35 U.S.C. §103(a) as allegedly being obvious over U.S. Patent No. 6,674,873 issued to Donescu et al. in view of U.S. Patent No. 6,421,445 issued to Jenson et al. In response, Applicant respectfully traverses the rejection of Claims 4 and 6 – 8 for at least the following reasons.

The Examiner cites col. 13, lines 25-46 and col. 5, line 66 to col. 6, line 6 of Donescu et al. as disclosing Applicant's claimed "insertion information memorizing means." However, Applicant's insertion information memorizing means is clearly described as a memory means that is disposed for identifying which one of the plurality of available watermarks is to be inserted at a particular pixel block. The insertion information memorizing means is divided into (A×B) information blocks, which correspond to (Y×Z) pixel blocks. Each block of the information blocks contains an identifier representing a particular one of the plurality of stored

watermarks that is to be inserted into the pixel block corresponding to that information block. (See: Applicant's page 28, lines 5 – 19).

The cited portions of Donescu et al. do not appear to disclose any such "insertion information memorizing means" as defined by the present disclosure. Further, Donescu et al., in totality, does not disclose the above-identified functional means.

The Examiner contends that an example of an insertion information memorizing means as provided in Applicant's specification does not constitute a definition of the insertion information memorizing means, as recited in the pending claims. A means-plus-function clause is interpreted under 35 USC § 112, (6) to cover the structure identified in the specification for performing the function or an equivalent structure. In construing a means-plus-function claim, the Court must first determine the claimed function. *Micro Chem., Inc. v. Great Plains Chem. Co., Inc.*, 194 F.3d 1250, 1257-58 (Fed. Cir. 1999). The Court must then determine what structure or structures disclosed by the written description performs the claimed function. The patentee is entitled to a range of equivalents for the disclosed function. *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1347-48 (Fed. Cir. 2001). The specification provides a disclosure of an example of an insertion information memorizing means as cited above. Therefore, the insertion information memorizing means is interpreted as being limited to that disclosure and equivalents. A memorizing means that is incapable of being configured as described above, could not be considered the same or equivalent to Applicant's claimed insertion information memorizing means.

Additionally, the Examiner has conceded that Donescu et al. fails to disclose accumulating statistical similarities for a predetermined time interval to produce an accumulation value. Jenson et al. is cited as disclosing this accumulation of statistical similarity. However,

G:\NEC\995\14447\amend\14447.am4.doc

Jenson et al. does not disclose or suggest accumulating statistical similarities calculated between stored watermarks and extracted watermark data for a predetermined time interval as recited in Applicant's claims. (See: Applicant's page 37, lines 3 – 25).

Rather, Jenson et al. specifically discloses a comparison value, computed from non-code bearing (i.e., non-watermarked) audio signals and other noise, being compared against one or more portions of an encoded audio signal. (See: Jenson et al. col. 29, lines 38-50). Thus, Jenson et al. teaches comparing non-watermarked data against portions of an encoded data signal. Therefore, even if the encoded data signal were interpreted broadly as being a watermarked data signal, Jenson et al. would fail to properly teach comparing an extracted watermark data against a stored watermark data, as required by Applicant's claims.

Donescu et al. discloses extracting low-frequency coefficients in order to form a low-frequency sub-image $\{dc^*_i\}$. However, there is no indication in the Donescu et al. disclosure that this low-frequency sub-image is an extracted watermark rather than merely portions of an image that may, or may not, contain a watermark. Thus, even though Donescu et al. discloses comparing coefficients w_i of a pseudo-random signal W with coefficients $\{dc^*_i\}$, this comparison is not equivalent to Applicant's electronic watermark data detecting means for calculating a statistical similarity between the extracted data, which is an extracted watermark, and the respective stored electronic watermark data.

As a result, if one skilled in the art of coding data were to combine Jenson et al. with Donescu et al., as proposed in the present Office Action, the resulting apparatus would fail to provide Applicant's claimed invention. Specifically, a combination of Jenson et al. and Donescu et al. would yield an apparatus that, at best, compares a sub-image to be processed against a

G:\NEC\995\14447\amend\14447.am4.doc

pseudo-random signal W, as taught in Donescu et al., over a period of time, as taught in Jenson et al.

On the other hand, Applicant's Claim 4 recites: "...data extracting means, supplied with an electronic watermark inserted composite image... for extracting, on the basis of said insertion information, the electronic watermark data in said electronic watermark inserted composite image by adding the blocks in which the same electronic watermark data are inserted to produce extracted data... electronic watermark data detecting means for calculating a statistical similarity between said extracted data and the respective electronic watermark data stored in said electronic watermark data memorizing means..." Thus, according to the recited limitations, the extracted data is electronic watermark data that had been inserted into the composite image. Therefore, the statistical comparison being performed is between extracted watermark data and the respective electronic watermark data stored in the electronic watermark data memorizing means – not between a sub-image, which may or may not contain a watermark, and a pseudo-random signal W, as taught by Donescu et al.
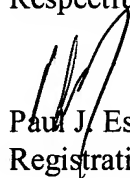
Consequently. Donescu et al. and Jenson et al., taken alone or in any proper combination, fail to disclose or suggest Applicant's electronic watermark data detecting means, as recited in the claims. Therefore, for at least the reasons given above, Claims 4 and 6-8 are believed to be patentably distinct and allowable over the cited prior art references. Accordingly, Applicant respectfully requests withdrawal of the rejection with respect to Claims 4 and 6 – 8 under 35 U.S.C. § 103(a) over Donescu et al. in view of Jenson et al.

G:\NEC\995\14447\amend\14447.am4.doc

CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims presently pending in the application, namely, Claims 4 and 6 – 8 are believed to be in condition for allowance and patentably distinguishable over the art of record.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call Applicant's undersigned attorney at the number indicated below.

Respectfully submitted,

Paul J. Esatto, Jr.
Registration No. 30,749

SCULLY, SCOTT, MURPHY & PRESSER, P.C.
400 Garden City Plaza - Ste. 300
Garden City, New York 11530
(516) 742-4343

PJE:DAT:jam:ae

G:\NEC\995\14447\amend\14447.am4.doc